

**Department of Community Affairs**  
**City of Hampton Hotel Motel Tax**  
**Complaint Investigation**  
**Report of Findings and Recommendations**  
**Approved by Performance Review Board 10/26/05**

**OVERVIEW**

The State Auditor's office submitted to DCA a finding of noncompliance regarding the expenditures of hotel motel tax revenues from the City of Hampton's 2003 audited financial statements. Georgia law requires that such findings of noncompliance be treated and investigated in the same manner as a bona fide complaint filed directly with DCA. (*See Supplemental Document 1*)

House Bill 1415 requires the Hotel Motel Tax Performance Review Board to conduct a thorough and complete investigation of the City of Hampton's expenditures of hotel motel tax revenues and its compliance with related state laws and regulations. The Bill further requires that the findings resulting from this investigation be disclosed by the Performance Review Board in a written report that includes appropriate evaluations, judgments, and recommendations. The recommendations in the report regarding corrective action to be taken by the city will then be submitted to the Commissioner of the Department of Community Affairs (DCA) for consideration.

As the State administrative agency responsible for conducting this review on behalf of the Performance Review Board, DCA's Office of Research has examined relevant documents and developed this report for the Review Board's consideration.

The finding submitted to DCA by the State Auditor's office involved an apparent timing issue. At the end of the city's fiscal year 2003, the city had not expended the required amount of hotel motel tax revenues.

While this finding focuses on one primary issue, as required by House Bill 1415, our review was more comprehensive, addressing not only this issue, but also broader issues regarding the city's compliance with related state laws and regulations. This involved looking at the city of Hampton's budget plans, expenditures made by the city through its Better Hometown program, contributions to the Henry County Chamber of Commerce's Convention and Visitors Bureau, specific contract services promised and delivered, and whether the nature of these services met/meet the restrictive definition of promoting tourism, conventions and trade shows.

This report begins with a discussion of the primary issue (finding) discussed in city's 2003 audited financial statements. It then discusses other compliance issues, and concludes with specific corrective action recommendations.

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**PRIMARY ISSUE - Auditor's Finding of Noncompliance**

The City of Hampton levies its hotel motel tax based on the authorization provided in code section 48-13-51(a)(3). (*See Supplemental Document 2*) This code section allows the city to expend at least 40% of the total taxes collected for the purpose of promoting tourism, conventions, and trade shows" under a contract with a private sector nonprofit organization. "Promoting tourism, conventions, and trade shows" is defined by O.C.G.A. 48-13-50.2 as "...planning, conducting, or participating in **programs of information and publicity** designed to attract or advertise tourism, conventions, or trade shows" (emphasis added). (*See Supplemental Document 3*)

Hampton's auditor found that the city collected \$14,449 in hotel motel taxes in fiscal year 2003. According to state law, a minimum of \$5,780 of this amount should have been expended for the promotion of tourism, conventions, and trade shows. However, their audited financial statements indicate that the city expended only \$3,500 for this purpose.

The city agreed with the auditor's finding of noncompliance and in their corrective action plan stated that, in 2004, the additional funds would be expended in accordance with the law. The city's 2004 audited financial statements indicate that this additional amount was remitted to the Hampton Better Hometown program, thereby resolving the noncompliance finding in the 2003 audited statements. However, for reasons discussed below it is questionable whether this action appropriately resolved the finding.

The city's audited financial statements do not indicate that the Better Hometown program is a separate legal entity. It is reported as a program of the city (with its activities being carried out by city employees) with related expenditures reported in the city's general fund. Simply moving funds from one city bank account to another (as appears to have occurred based on the documents provided) does not constitute an "expenditure." Therefore this action would not have resolved the finding.

**OTHER COMPLIANCE ISSUES**

**City/Better Hometown Expenditures/Budget Plan**

O.C.G.A. 48-13-51(a)(9)(B) states that a "... a county or municipality imposing a tax ... shall prior to the imposition of the tax ... and prior to each fiscal year thereafter in which the tax is imposed adopt a budget plan specifying how the expenditure requirements of this Code section will be met."

The city's 2004 audited financial statements include a hotel motel tax budget. However this budget contains only one expenditure line item entitled "community development" with no additional detail. (*See Supplemental Document 4*) The city provided no other budget

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documents to indicate that they had a budget plan in place specifying how the expenditure requirements of 48-13-51(a)(3) were to be met.

O.C.G.A. 48-13-51(a)(3) specifies that hotel motel tax revenues expended for the purpose of promoting tourism, conventions, and trade shows "...shall be expended only through a contract or contracts with...a private sector nonprofit organization..."

While the audited financial statements of the city of Hampton refer to the Better Hometown "Corporation," the notes to the financial statements regarding the reporting entity do not include the disclosures that would be required if Better Hometown was in fact a separate legal entity. The city of Hampton's Better Hometown activities are being reported as a program of the city. Therefore, the expenditures from the restricted portion of the hotel motel tax funds made directly by the city through this program (as opposed to expenditures made through a private nonprofit organization) are not allowable under O.C.G.A. 48-13-51(a)(3).

However, even if the City had used a private nonprofit organization for the activities discussed in the following paragraph, it is still questionable as to what portion of these activities would be allowable under O.C.G.A. 48-13-51(a)(3).

The Better Hometown program is designed to foster the development/redevelopment of the city's core commercial areas, with emphasis on community-based, self-help efforts grounded in the principles of professional, comprehensive management of the core commercial district within the context of historic preservation programs. While it can be reasonably argued that the Better Hometown program has some positive impact on tourism, conventions, and trade shows, the primary purpose of the program is to foster the city's downtown commercial area. (*See Supplemental Document 5*)

Regarding the actual expenditures of the Better Hometown program, much of the information we requested from the city was piecemeal and incomplete. Therefore, we were unable to determine whether or not all of the hotel motel tax funds expended through the Better Hometown program were expended in accordance with the state law.

**Chamber of Commerce Expenditures/Budget Plan**

In addition to the city's budget plan, O.C.G.A. 48-13-51(a)(9)(B) also requires the city to "... obtain from the authorized entity with which it proposes to contract to meet the expenditure requirements of this Code section a budget for expenditures to be made by such organization; and such budget shall be made a part of the county or municipal budget plan."

The Henry County Chamber of Commerce provides tourism-related services through its Convention and Visitors Bureau (CVB) division. Based upon our review of documents

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provided to us by the Henry County Chamber of Commerce, it appears that the Chamber is using the hotel motel tax revenues in accordance with Georgia law. In its fiscal year ended in 2004, the Chamber expended over \$114,000 for advertising purposes. While it is unclear what portion of this amount was directed specifically to the City of Hampton, it appears that the Chamber provided a level of advertising and promotion benefiting the city of Hampton that was at least commensurate with Hampton's \$3,116 contribution. (*See Supplemental Document 6*)

It was noted, however, in our review of the Chamber's financial information that the CVB division is reporting hotel motel tax revenues as "unrestricted." Obviously, given the limitations enumerated in 48-13-51(a)(3) these funds should be treated as "restricted" program income.

## **CORRECTIVE ACTION RECOMMENDATIONS**

### **Opportunity for Review and Comment**

On September 13, 2005 DCA provided a copy of our preliminary findings and recommendations to Hampton via facsimile and certified mail. We invited the City to review the report and to respond with any comments and/or additional information that would help us to more accurately report our findings and recommendations. We received no response from the City of Hampton. (*See Supplemental Document 7*)

### **Primary Issue - Auditor's Finding of Noncompliance**

While we recommend no specific corrective action, this compliance issue is appropriately addressed in the following corrective action recommendations.

#### **City/Better Hometown Expenditures/Budget Plan**

The city's Better Hometown program apparently is not a private nonprofit organization. Therefore, expending funds from the restricted portion of the hotel motel tax for Better Hometown activities is not allowable under O.C.G.A. 48-13-51(a)(3) and should cease immediately upon notification of corrective action requirements by the DCA Commissioner.

The City of Hampton should develop and adopt an annual hotel motel tax budget plan which clearly demonstrates how it intends to expend the funds in accordance with the law. The budgeted expenditures should include only the cost of activities that will result in specific programs of information designed to promote tourism, conventions, and trade shows.

#### **Chamber of Commerce Expenditures/Budget Plan**

The City must require the Chamber or any other private nonprofit entity with which it chooses to contract to carry out their promotion of tourism, conventions, and trade shows to submit a budget to the City of Hampton, prior to the City finalizing its annual budget,

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which clearly demonstrates how the nonprofit corporation intends to expend the funds in accordance with the law. The budgeted expenditures should include only the actual or prorated cost of activities that will result in specific programs of information designed to promote tourism, conventions, and trade shows for the City of Hampton.

Hotel motel tax funds received by the Chamber can only be expended for the purpose of promoting tourism, conventions, and trade shows. Therefore, the Chamber's accounting records and related reports must record/report any unexpended hotel motel tax revenues as a "restricted asset."